

California Regional Water Quality Control Board
North Coast Region

COMPLAINT NO. R1-2002-0073

FOR

MANDATORY PENALTIES
FOR VIOLATIONS OF
WASTE DISCHARGE REQUIREMENTS
ORDER NOS. R1-2000-60 AND R1-2001-63 (NPDES NO. CA0005894)

IN THE MATTER OF
SAMOA PACIFIC CELLULOSE, LLC

Humboldt County

This complaint to assess Mandatory Penalties pursuant to Water Code Section 13385 is issued to Samoa Pacific Cellulose, LLC (hereinafter permittee), for violations of Waste Discharge Requirements Order Nos. R1-2000-60 and R1-2001-63 (NPDES No. CA0005894) for the period February 22, 2001 through April 30, 2002.

The Executive Officer of the Regional Water Board finds the following:

1. On August 25, 2000, the North Coast Regional Water Quality Control Board (hereinafter Regional Water Board) adopted Waste Discharge Requirements Order No. R1-2000-60 for the Louisiana-Pacific Samoa, Inc. Pulp Mill at Samoa, Humboldt County. Louisiana-Pacific Samoa, Inc. transferred ownership of the Samoa Pulp Mill to the permittee on February 22, 2001. On June 28, 2001, the Regional Water Board adopted Waste Discharge Requirements Order R1-2001-63 (NPDES Permit No. CA0005894) for Samoa Pacific Cellulose, LLC. The new Order made a name change in the permit and did not change any of the conditions of the permit. The Discharger operated the Samoa Pulp Mill between February 22, 2001 and April 30, 2002, under Order Nos. R1-2000-60 and R1-2001-63.
2. California Water Code Section 13385(h)(2) states that a serious violation occurs if the discharge from a facility regulated by an NPDES Permit exceeds the effluent limitations for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more.

3. California Water Code Section 13385(h)(1) requires the Regional Water Board to either: (1) assess a mandatory penalty of three thousand dollars (\$3,000) for the first serious violation in any six-month period, or (2) in lieu of the penalty, require the permittee to spend an equal amount for a supplemental environmental project or to develop a pollution prevention plan.
4. Water Code Section 13385(i)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first violation, if the permittee commits two or more serious violations in any six-month period.
5. California Water Code Section 13385(i)(2) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six month period:
 - Exceeds a waste discharge requirement effluent limitation;
 - Fails to file a report pursuant to Section 13260;
 - Files an incomplete report pursuant to Section 13260; or
 - Exceeds a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
6. Order Nos. R1-2000-60 and R1-2001-63 both contain **B.EFFLUENT LIMITATION 1**, which establishes the following applicable effluent limitations:

Parameter	Units	Monthly Average	Daily Maximum
BOD ¹ @ 20°C	Lbs/day	11,270	21,630
pH	Standard	Within the range 5.0 to 9.0	

BOD and pH are identified in Appendix A, Title 40 Code of Federal Regulations, Section 123.45, as Group I pollutants.

Data contained in the permittee's Self-Monitoring Reports for the months March 2001 through April 2002 reveal that the discharge violated effluent limitations for biochemical oxygen demand and pH as follows:

- a) Order Nos. R1-2000-60 and R1-2001-63 [pursuant to 40 CFR 401.17(a)(1)] allow up to 446 minutes per month during which

¹ Biochemical Oxygen Demand

effluent with a pH outside the 5.0 to 9.0 pH range may be discharged without penalty. The pH was out of the specified range for 495 minutes in March 2001. The pH was also out of the specified range for 631 minutes in January 2002. These are not considered serious violations because they do not exceed the effluent limitation by 40 percent. Violations of the pH effluent limitation did not occur four or more times in any six-month period; therefore, no penalty is assessed for these pH violations.

b) Serious violations

Violation Date	Limit² Exceeded	Reported Discharge Mass (lbs/day)
August 2001	Monthly Average	21,500
August 22, 2001	Daily Maximum	30,579

c) All violations

Date Recorded	Limit² Exceeded	Reported Discharge Mass (lbs/day)
March 29, 2001	Daily Maximum	25,942
March 2001	Monthly Average	11,439
April 2001	Monthly Average	14,639
May 3, 2001	Daily Maximum	26,742
May 2001	Monthly Average	15,351
June 14, 2001	Daily Maximum	25,816
July 25, 2001	Daily Maximum	21,877
August 15, 2001	Daily Maximum	29,762
August 22, 2001	Daily Maximum	30,579
August 2001	Monthly Average	21,500
September 2001	Monthly Average	12,007
March 6, 2002	Daily Average	28,841
March 2002	Monthly Average	13,073

7. Biochemical oxygen demand (BOD) violations for monthly average limits for August 2001, and daily maximum limits on August 22, 2001, exceeded the applicable effluent limits by more than 40% (serious violations). Therefore, these violations are subject to Section 13385(h). In accordance with California Water Code Section 13385(h), a mandatory penalty of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the second violation, of a serious nature occurring within a six-month period. The total amount of the mandatory penalty for serious effluent violations listed in Finding No. 6 above is **\$3,000**. In lieu of

² Biochemical Oxygen Demand Limits: Monthly Average 11,270 lbs/day, Daily Maximum 21,630 bx/day.

assessing a \$3,000 penalty for the first violation during August 2001, the Regional Water Board may require the Discharger to spend an equal amount (\$3,000) for a supplemental environmental project, or to develop a pollution prevention plan. In view of the history of BOD violations, it is appropriate that Samoa-Pacific Cellulose, LLC develop and submit a pollution prevention plan in lieu of paying a \$3,000 penalty for the first serious violation.

8. A total of 13 violations exceeded applicable effluent limits during the period of February 22, 2001 to April 30, 2002. Ten violations occurred during the six-month period of March 2001 through August 2001. In accordance with California Water Code Section 13385(i), a mandatory penalty of three thousand dollars (\$3,000) must be assessed for each violation, beginning with the fourth violation occurring within a six-month period. Of the ten violations that occurred during the six-month period of March 2001 through August 2001, the first three are not subject to mandatory penalties. Thus, the seven remaining violations are subject to a mandatory penalty.

During the six-month period of April 2001 through September 2001, nine violations occurred. The first eight violations are subject to penalties as described in the paragraph above. The one additional violation occurring in September 2001 is subject to a mandatory penalty.

The total amount of the mandatory penalty for the eight chronic effluent violations described in the two paragraphs above is **\$24,000**.

9. The total amount of the mandatory penalties for serious and chronic violations occurring during the period February 22, 2001 through April 30, 2001 is **\$27,000**.
10. Due to the nature of these violations and the lack of any long-term impact to beneficial uses of water, administrative civil liabilities in addition to the mandatory minimum penalties are not appropriate for these effluent violations.

SAMOA-PACIFIC CELLULOSE, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the permittee be assessed a Mandatory Penalty in the amount of **\$27,000** and that the permittee shall develop and submit a pollution prevention plan within 30 days of the date of the final Regional Board action on this complaint.
2. The Regional Water Board shall hold a hearing on August 22, 2002 to consider imposing this penalty unless the Discharger agrees to waive the hearing and pay the mandatory penalty of **\$27,000** in full.
3. The permittee may waive the right to a hearing. If you wish to waive the hearing, please check and sign the attached waiver and return it and a check made payable to the State Water Resources Control Board for the full amount of the mandatory penalty to the Regional Water Board's office at the letterhead address, by August 9, 2002. If paid, the Waiver will not be effective until after the conclusion of a thirty-day public comment period.

Susan A. Warner
Executive Officer

July 9, 2002